

SUMMARY OF ISSUES & TVA POSITIONS

The Department of Energy (DOE) recently completed a comprehensive process to develop recommendations on how the Tennessee Valley Authority (TVA) should be treated under the Administration's legislative proposals to bring competition to the electric utility industry. DOE established the Tennessee Valley Electric System Advisory Committee (Adcom) comprised of representatives of major stakeholder groups that could be affected by changes to TVA. These included:

- TVA
- Tennessee Valley Public Power Association (distributors of TVA power)
- Tennessee Valley Industrial Committee (industries directly served by TVA)
- Associated Valley Industries (industries served by TVA distributors)
- The League of Women Voters
- Tennessee Valley Energy Reform Coalition
- International Brotherhood of Electrical Workers and The Teamsters Union
- TVA Watch (representing investor-owned utilities)
- National Gas Clearinghouse and Enron (power marketers)
- Southern States Energy Board
- Rural Legal Services

TVA believes that this was a very worthwhile process which allowed stakeholders to openly debate the many complex issues TVA must confront in the move to a competitive industry. The process revealed a remarkable amount of consensus between various stakeholders--particularly between TVA and its distributor and industrial customers.

The following is a summary of the issues considered by the Adcom and TVA's position on each of them. Major differing opinions by other groups on the Adcom are also noted. For a more comprehensive breakdown of positions by specific Adcom members, see the attached matrix.

Issue 1: Transmission and Wholesale Rate Jurisdiction

Should TVA be subject to the Federal Energy Regulatory Commission's (FERC) jurisdiction for transmission and wholesale rates?

TRANSMISSION:

TVA, its distributor and industrial customers, and other members of the Adcom believe TVA and all other transmission owners/operators should be uniformly subject to FERC transmission regulations.

- Under full retail and wholesale competition, TVA agrees that the rates terms and conditions of transmission service provided by all transmission owners or operators in the United States, including TVA, should be subject to FERC regulation and jurisdiction. TVA believes this is the best way to ensure full and fair competition.
- If all transmission owners/operators do not become subject to FERC, TVA does not believe it would be fair to single TVA out for a change in transmission regulation. Competing utilities and power marketers from outside the Valley want to see TVA subjected to FERC regardless of whether other transmission owners/operators are excused.

WHOLESALE RATE JURISDICTION:

TVA and its industrial customers believe the TVA Board should retain the authority to establish electricity rates.

- As the industry becomes more competitive, TVA should have the freedom to set market-based rates to attract customers, just as its competitors will do.
- As a non-profit agency (and unlike investor-owned utilities), TVA needs no additional oversight to ensure that it does not earn an unreasonable profit.
- TVA is already required by Federal law to set rates only to recover costs and to provide service that are charged to customers fairly.
- A third-party review of TVA rates would have a negative effect on TVA's bond ratings which would ultimately increase the cost of power to TVA customers.
- Distributors believe the TVA Board should retain the power to set rates, but would like the right to appeal TVA rate decisions in federal court.
- Competing utilities, power marketers from outside the Valley and some other panel members, want FERC to have jurisdiction over TVA rates as soon as restructuring legislation is passed.

Issue 2: Antitrust and Labor Law Status

Should TVA be subject to the federal antitrust laws and the National Labor Relations Act?

ANTITRUST:

TVA, its distributor and industrial customers, and others agree that all requirements and behavioral restrictions of the antitrust laws--including criminal penalties but not financial penalties--should apply to TVA.

- The US antitrust laws are intended to ensure that private, for-profit businesses do not engage in anti-competitive behavior.
- TVA, as a federal, non-profit agency, has no incentive to engage in anti-competitive behavior.
- To satisfy concerns that TVA “could conceivably” attempt to engage in anticompetitive behavior, TVA has agreed to be bound by the provisions of the antitrust laws, with injunctive relief in Federal Court.
- Plaintiffs in successful antitrust complaints are sometimes allowed to recover treble damages. For profit-making businesses, these charges properly are assessed against profits or investors. Since TVA has no profits or investors, any damages would be paid by TVA ratepayers. TVA believes this would be unfair to electricity consumers and opposes the payment of damages.
- Competing utilities from outside the Valley want TVA to pay for any possible antitrust violations from TVA’s retained earnings, which ultimately are paid by ratepayers.

LABOR LAW:

TVA, its distributor and industrial customers, and the Teamsters Union believe that the current Federal requirements governing TVA labor relations should not be changed.

- The current system has worked well for 50 years and is comparable to laws governing private utilities.
- Competing utilities from outside the Valley, the International Brotherhood of Electrical Workers, and others believe TVA should be subject to additional labor law, including National Labor Relations Act. This would subject TVA to significantly more pressure on wages and contract conditions than investor-owned utilities or independent power producers would have.

Issue 3: Tax Status for Public and Federal Power Entities

How should restructuring legislation provide for TVA's tax status?

TVA, its distributor and industrial customers favor a new excise tax on electricity to replace in-lieu-of-tax payments; income taxes for non-profit organizations should be handled through separate national legislation.

- In-lieu-of-tax payments for producers of electricity should be replaced with some form of public utility excise tax. (TVA paid \$272 million last year in-lieu-of-tax payments.)
- TVA, as a non-profit federal agency, should not be subject to federal or state income tax. The issue of income tax treatment for non-profit entities should be addressed by separate national legislation.
- Existing tax-free power bonds should be "grandfathered."
- Competing utilities and some power marketers from outside the Valley believe TVA should pay income tax which would threaten TVA's 10-year financial plan and raise power costs in the Valley.

Issue 4: Retail Regulation

Who should regulate retail electricity sales in the TVA region?

TVA concurs with power distributors and distributor-served industries that regulatory control should be assured at the local level.

- Local control would permit greater responsiveness to customer concerns than additional regulatory bodies at the state or regional level.
- TVA regulation of retail rates will not be needed in the new marketplace.
- Others on the Adcom advocate regulation at the state or regional level.

Issue 5: TVA's Mission

Should TVA's mission be modified?

TVA and all Adcom members from the TVA region, including distributor and industrial customers, believe that "TVA's mission is important to the region and the Nation and the integrated nature of TVA's natural resource stewardship and power production activities should be continued."

- All of these groups agree that TVA should continue to receive an appropriate level of federal funding for non-power programs that support navigation, flood control, water quality and similar activities.
- Reassigning these responsibilities to other agencies would simply erase the benefits of TVA's integrated management of the river, while diffusing responsibility and increasing administrative costs to the federal government.

- Competing utilities and power marketers from outside the Valley believe that many of the “functions” performed by TVA should be provided by the private sector or other government agencies.

Issue 6: The Fence and Anti-Cherry Picking Provision

Should the fence and the anti-cherry picking provision be removed? If so, when? (The fence is TVA’s legal service boundary. TVA is prohibited from “crossing” the fence to serve customers of other utilities. The anti-cherry picking provision prevents other utilities from “crossing” the fence to serve TVA’s customers.)

TVA, its distributor and industrial customers and all other Adcom members recommend that the fence and anti-cherry picking provision should be removed at the same time that retail competition is implemented.

- However, power marketers from outside the Valley believe that if retail competition is delayed, the fence and anti-cherry picking provision should be removed anyway. This would allow them to compete for TVA’s wholesale customers while TVA is legally prohibited from competing for retail customers.
- This scenario could ultimately lead to TVA’s financial collapse for the following reasons:
 - About 85 percent of TVA’s electricity sales are to wholesale customers; only 15 percent are retail sales. Neighboring utilities, on the other hand, serve mostly retail customers and have only a few wholesale customers.
 - If the anti-cherry picking provision is removed, competitors will be able to compete for the vast majority of TVA’s (wholesale) customer base.
 - If the fence is removed--but retail competition is not allowed--TVA would not be able to compete for retail customers at the very time that it is losing wholesale customers.
- TVA, under this scenario, would be singled out and effectively prohibited from competing in the newly competitive industry.

Issue 7: Wholesale Power Contracts

How should restructuring legislation affect TVA’s wholesale power contracts?

TVA, its distributor customers and others recommend that contracts should not be changed arbitrarily by legislation.

- At the same time, TVA’s wholesale customers should have the option, but not be required, to renegotiate wholesale contracts with TVA if they wish to have access to open markets for electricity.
- Any contract renegotiations should be completed 12 months before retail competition is legally required to begin.

- Competing utilities do not want legislation requiring their contracts to be renegotiated. These utilities and some marketers from outside the Valley also want FERC to review all TVA power contracts.

Issue 8: The Retail/Wholesale Nature of TVA

Should TVA remain a wholesaler of electricity, or should legislation allow retail customers to choose TVA as a power supplier?

TVA, its distributor and industrial customers, and all other Adcom members agree that TVA should remain basically a wholesaler of electricity.

- TVA should be able to sell at wholesale outside the fence.
- TVA should retain its existing retail (directly served) customers.
- TVA and its distributor and industrial customers also believe TVA should be allowed to sell at retail inside the fence under certain conditions and retail outside the fence with FERC approval.
- Competing utilities, power marketers from outside the Valley and others want TVA to be prohibited from serving any new retail customers inside or outside the fence.

Issue 9: Stranded Cost

How should TVA's stranded costs be determined and recovered? (Stranded costs are investments utilities made to meet legal or contractual obligations, but can no longer be recovered because of the transition to competition.)

TVA, its distributor and industrial customers, and all other Adcom members agree that any stranded costs resulting from federally mandated competition should be paid by the TVA or distributor customers for whom the investments were made.

- FERC or another federal authority should approve TVA's stranded cost recovery.
- All stranded costs should be recovered by October 1, 2007, unless extended by mutual agreement.
- All stranded costs should be used to pay down TVA's debt.
- Competing utilities and power marketers from outside the Valley believe Congress--not FERC--should decide whether TVA should be allowed to make retail sales outside the fence to recover stranded costs.